

Remarks

Applicants respectfully request reconsideration of the above-identified application. Claims 1-60 remain in this application.

I. Allowable Subject Matter

Applicants note with appreciation the allowance of claims 45-51 and 60. However, it appears that claim 60 has also been indicated as rejected as discussed below.

Applicants also note with appreciation the indication that claims 18-35, 39-44, and 58-59 are directed to allowable subject matter.

II. Rejection Based on the '892 Application

Claims 1-17, 36-38, 51-57, and 60 were rejected under 35 U.S.C. §102(e) as anticipated by U.S. Patent Application Publication 2004/0241482 filed June 2, 2003 (corresponding to U.S. Patent Application Serial No. 10/452,892).

The final Office action stated that the Rule 1.132 Declaration that Applicants submitted with the previous response to overcome this rejection was insufficient because the Declaration did not establish performance in the U.S., a NAFTA country, or a WTO member country. (Office action mailed May 5, 2005 at page 2, § 1.)

However, it is respectfully submitted that there is no such location performance requirement for a Rule 1.132 Declaration. Rather, the requirement for U.S., NAFTA, or WTO performance is with respect to a Rule 1.131 Declaration, which is used to establish a date of invention to "swear behind" a reference. (*See MPEP §705.07(c).*)

In the present case, Applicants are not establishing a date of invention to swear behind a reference. Therefore, Applicants have not filed a Rule 1.131 Declaration. Rather, Applicants filed a Rule 1.132 Declaration with the previous response to establish that the inventors of the present application -- Grah and Havens – conceived the subject matter of the '482 publication that is relied upon in the §102(e) rejection. Namely, Grah and Havens contributed the idea of the subsequent irradiation of one or more film layers comprising single wall carbon nanotubes. (*See '482 publication ¶¶ 0014-0017, 0029, 0041-0052, and 0138.*)

Accordingly, the relevant subject matter asserted to be disclosed in the '482 publication, but which is not claimed in the '482 publication, was derived from the work of the inventors of the present application and is thus not the invention "by another" as required by §102(e).

Applicants respectfully submit that rather than looking to MPEP §715.07(c), which is directed to Rule 1.131 Declarations, this matter is better informed by reference to MPEP §716.10 ("Attribution") and §2136.05 ("Overcoming a Rejection Under 35 U.S.C. 102(e)'), both of which discuss the use of a Rule 1.132 Declaration to establish that the relevant disclosure of a reference is Applicants' own work. Applicants' previous submission met the requirements set forth in those MPEP sections with respect to a Rule 1.132 Declaration. Therefore, the previous Rule 1.132 Declaration was sufficient to overcome the rejection under §102(e).

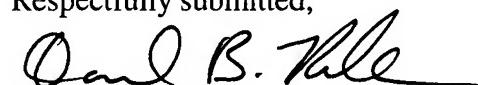
III. Conclusion

In view of the these remarks, it is respectfully submitted that the present application is in condition for allowance. A notice to that effect is earnestly and respectfully requested.

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Respectfully submitted,



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Date: September 5, 2006